

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
March 28, 2013

Meeting called to order at 6:04 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Susan Tuveson, Bob Melanson, Mark Alesse, Ann Grinnell, Rich Balano, Ann Grinnell

Members absent: None

Staff: Gerry Mylroie, Town Planner

Pledge of Allegiance

Minutes: March 14, 2013

Ms. Grinnell moved to accept the minutes as submitted

Mr. Balano seconded

Motion carries unanimously by all members present

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

Joe Gasbarro, 11 Highpointe Circle – Presented on-going issues in the Highpointe Circle area:

- Referenced an email of November 9, 2012 from the Fire Chief stating the road should be named Highpointe Circle, due to safety concerns, with similar numbers on Kittree Lane;
- An April 2012 letter from the Town of Kittery to Operation Blessing directed removal of a gate that is still in place providing Operation Blessing access from Woods Road to Highpointe Circle. In 2010 Operation Blessing was told they would no longer have access from Woods Road. A letter from an Attorney to the Town requesting these actions be completed was referenced.
- The gate behind his property is being used by logging trucks and is used daily by vehicles, creating an intrusion and safety issues.
- Requests the Town name the road as proposed by the Fire Chief.
- The original Beatrice Lane construction expired and a new permit received, but construction is not finished, and requested a tour of site.
- His and Mr. Hanson's property are part of the original association and subdivision and the ROW their properties are located on should have been accepted by Town as part of Highpointe Estates.

Mr. Gasbarro presented the letters and emails for the record.

Mr. Emerson explained the unfinished house is a Code Enforcement issue. The issues regarding the gate and use of the road will need to be further discussed by the Board at a later date.

Melissa Morehead, 10 Highpointe Circle, stated she has the same issues. The Gasbarro and Hanson properties should be considered part of Highpointe Estates, noting the tax map is the same as all other properties in the subdivision, and their address should be reflected as such. In July 2008, Planning Board member Carl Beal stated Highpointe Estates is separate from the Beatrice Lane Subdivision Development and would not impact Highpointe Estates. She requested clarification regarding the name of road. She also noted Operation Blessing employees are traversing a brook.

Mr. Gasbarro stated since the last meeting, police have told Mr. Hanson and Gasbarro they are not allowed to use Kittree Lane as an access, noting this came from Operation Blessing.

Dave Hansen, 14 Highpointe Circle, stated he echoed the same sentiments. He felt everyone has been very patient and it's time for a decision to be made.

Pete Thomas, 2 Frog Hollow Lane, Kittery Point noted the 126th Maine Legislature has proposed LD 220 to protect private property rights shaped by land use planning, public policy and education, and LD 1810,

common sense legislation reform to protect private property owners, regarding the diminished values of private land as result of land use regulations and to provide compensation for devaluation. He asked what happened to the 5-year subdivision rule, and why is the Open Space Committee recommending emergency legislation? This type of legislation is not related to or required by Comp Plan Update. The 10-year update is needed if there are changes in population, income, housing, etc. but not zoning laws. Small land owners are holding land, paying taxes, and want the opportunity to remain in Town, and use their property for retirement. With proposed zoning changes, he feels they are being stripped of financial security. Many in Kittery have a generational stewardship of their land, and smart growth initiatives appear overreaching and, if unchecked or unquestioned, threaten the small landowner in Kittery. Mr. Emerson stated the Board does not feel there is a need for emergency legislation regarding an increase from 1-3 acres in the rural zone, and the five-year rule is still in place.

David Lincoln, Shepards Cove, suggested to improve communication and transparency in government the Planning Board should consider meetings and hearings be televised, similar to Council meetings. He noted that Mr. Mylroie stated that hearings on the Route 1 Bridge will be broadcast. He offered to pay for six months of televised meetings.

Mr. Emerson noted they will consider this request.

Mr. Melanson addressed the medical emergency at the recent site walk and commended the first responders, Mr. Alesse and other participants in their swift action to help.

ITEM 1 – Board Member Items: Comments and Discussion

Ms. Grinnell:

- New meeting format to begin in April with the first meeting of the month to be agenda items and the second meeting of the month for policy review.
- Fernald Road – thought this was coming before the Board. Mr. Mylroie stated he has been advised of the need for review, but he has not filed an application. He has stopped work, but is not in violation.
- Punch List review scheduled for 4/25 meeting.

Mr. Alesse: none

Ms. Driscoll:

- Other town's meetings are listed in Monday's paper and thought Kittery's meetings should be included.
- Legal notices have been noticed in the paper; the site walk on April 2 appeared on March 27;
- Requested abutters list to assure accuracy.

Mr. DiMatteo explained the abutter information is taken from the assessor's database information, which is the same database used by the sewer department, tax billings, etc. The ordinance requires 150 feet abutter notifications. The database has been updated with 2012 tax records.

Mr. Balano: None

Ms. Tuveson: None

Mr. Melanson: Noted the recent Brave Boat Harbor site walk was the most thorough he has ever attended. He noted there will be a meeting on April 23 at Frisbee Commons on the Sarah Long Bridge.

Mr. Emerson:

- Noted he has received an increase in emails from Kittery residents. He asked the Board how they wanted him to handle them. Mr. Mylroie suggested he forward emails to staff to include on an agenda or in packets as communications to the Board. Ms. Tuveson noted it is important that Board members not respond to any emails other than an acknowledgement.
- Site Walks: Recommend applicants update vernal pool identification during the upcoming window of opportunity, but does not want to hold off scheduled site walks. Regarding the recent site walk, he got the general idea of the site, but feels another could be scheduled.
- The site walk minutes should be amended to reflect the site walk was not adjourned, but moved to continue. Mr. Mylroie stated when the applicant returns before the Board, other requests of the applicant can be made at that time. He also noted code amendments suggesting no site walks during

winter months have been rejected in the past. Mr. Balano noted a site walk is intended to orient the Board to the property, not to conduct soil analyses, vernal pool identification, etc. which is provided by the experts during plan review.

ITEM 2 – Town Planner Items:

A. Kittery Foreside Plan; (no discussion)

B. Comprehensive Plan Update (Housing, Economy, Land Use, Transportation); (no discussion)

C. *Creative Kittery Opportunities* – A public meeting was held on March 16, 2013 with the Economic Development Committee, attended by approximately 30 people. There was a wide representation from people in the arts and the schools. Non-profit tax status was discussed.

D. Other

- Presentation by MDOT regarding 236 by-pass and over-pass project status to be held on Wednesday, April 3, 6:00 pm. in Council Chambers. Mark Alesse and Ann Grinnell will attend for the Planning Board.
- Kittery Community Market – Grand opening May 29 at Post Office Square from 2-6 p.m. Approximately 12 local farms have expressed an interest in participating. Market organizers are also working with schools to provide entertainment, and there will be available spaces for non-profit organizations to raise mission awareness. Ms. Driscoll noted that Dot Avery, Market Manager, can be reached on Facebook at kitterycommunitymarket.com if anyone wishes to be involved. A percentage of tables will be available for artisans, and the group is seeking tax-deductible business sponsorships. Ms. Tuveson stated there will be plant and flower sales as well.
- He and Mr. DiMatteo are unavailable to attend the scheduled site walk on Tuesday, April 16.

NEW BUSINESS

ITEM 3 – Gerhartz/Pendry Residence — Pepperrell Road — Shoreland Development Plan Review

Action: Accept or deny plan application and schedule a public hearing. Steven Gerhartz and Susan Pendry, owner and applicant, requests approval to expand the existing two-story dwelling which is located at 118 Pepperrell Road in the Residential-Kittery Point Village and Shoreland Overlay zones, Tax Map 27, Lot 37.

Ken Markley, Northeasterly Survey summarized the application, proposing landscaping and renovations on an existing building. A small portion of the building falls within the 100 foot shoreland overlay setback, noting the retaining wall will be moved under the building and a deck area will be decreased. An existing 3-season porch will be changed to a screened porch and extended around to the side of the building, outside of the 100-foot setback. [Added from testimony provided by Mr. Markley at the 4/11/13 Board meeting: For 25 years, elevation 6 was utilized, however the DEP now utilizes HAT (Highest Annual Tide) and in Kittery this varies from 7.0 to 7.2. The measurement is determined from the prior year's HAT. However, the variables are insignificant.] Miscellaneous boardwalks will be removed and the existing driveway will be landscaped, resulting in a decrease in impervious area. A new driveway is proposed to a proposed garage expansion under the house, also outside of the 100-foot setback. Proposed new steps will be built into the existing landscape. The building is an existing, non-conforming as it sits in the 40 foot front setback.

Brendan McNamara, architect, stated there is no increase in the existing footprint of living spaces.

Mr. Melanson moved to find the application complete and schedule a public hearing.

Ms. Tuveson seconded

No site walk scheduled

Motion carries unanimously

A public hearing was scheduled for April 11, 2013.

ITEM 4 – Beatrice Way Subdivision – Modification to an Approved Plan Review

Action: Consider Cluster Subdivision plan application as Sketch Plan, accept or deny application and schedule Site Walk. Owner Operation Blessing LP, and applicant Richard Sparkowich, propose to amend the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane to create one additional lot. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential – Rural (R-RL) Zone. The owner’s agent is Ken Markley, with Easterly Surveying, Inc.

Mr. Emerson read an email from Richard Sparkowich:

Please be advised that Operation Blessing Limited Partnership respectfully requests to table our application presently before the Kittery Planning Board. We will be in contact with the Planning Department regarding a new date.

Ms. Grinnell moved to table this item.

Ms. Tuveson seconded

Motion carries unanimously

ITEM 5 – Clayton Lane Subdivision - Modification to an Approved Plan Review

Action: Consider Cluster Subdivision plan application as Sketch Plan, accept or deny application and schedule Site Walk. Josh Abbott, owner and applicant proposes to amend the previously approved 4-lot subdivision located at 25 Remicks Lane with the addition of two dwelling units. The site is identified as Tax Map 65 Lot 12, ±21.4 acres in the Residential - Rural (R-RL) Zone. The owner’s agent is Ken Markley, with Easterly Surveying, Inc.

Ken Markley explained the original subdivision was approved in 2011 with four lots. The current request is to divide two existing lots and review the new plan under the cluster development ordinance. However, the owners of the original parcel #1 do not wish to participate in the subdivision process or the homeowners or road association as they access their property from Remicks Lane. He noted the existing stone wall and area between abutting parcels on proposed parcel 4B will be sold to Mr. Wilson, abutter, and the calculations will be adjusted. Owners have been in touch with the Kittery Land Trust to utilize their forestry management plan in establishing the open space on the proposed cluster development. He identified the proposed common and limited open space. No changes are proposed on the approved roadway, though a wetland alteration permit will be needed on parcel 4B for the proposed driveway.

Mr. Balano moved to accept the Clayton Lane modification as essentially complete and to schedule a public hearing and site walk.

Ms. Tuveson seconded

Motion carries unanimously

A site walk was scheduled for Wednesday, April 17 at 8:00 a.m.

Mr. Mylroie noted he and Mr. DiMatteo would not be available for this site walk.

Ms. Driscoll noted the plan address of 25 Remicks Lane needs to be removed from the plan.

Break

ITEM 6 – Title 16 Amendment – Brew Pub and Micro-Brewery use and definition

Action: Review proposed amendment and determine if complete for scheduling a Public Hearing. Proposed amendment includes adding Brew Pub and Micro-Brewery to the Town’s Land Use and Development Code’s definitions (Section 16.2) and to allow in various commercial related zones as a permitted use and as a special exception use in the Shoreland Overlay Zone (Title 16.3).

Ms. Tuveson and Ms. Driscoll asked if they needed to recuse themselves. [There was no decision regarding this question.]

Mr. Mylroie summarized there were interested parties searching for locations to establish a micro-brewery and brew pub business and found there were no suitable existing locations and the permitted use in zones was not clear. Following the recent Creative Kittery Opportunities meeting it was evident a code amendment was needed. He referenced a memorandum from Tod Mott explaining the difference between micro-breweries and large scale breweries, such as Budweiser or Coors. He suggested the definition of

micro-brewery include the phrase 'less than 5,000 barrels per year', and under the definition of brew pub 'other beverages' would include coffee or other similar products. Discussion followed regarding a broader definition of brew pub and possible uses vs. micro-brewery and manufacturing. Mr. Emerson noted the state refers to micro-breweries and associated brew pubs as craft food production distribution (such as bakeries, green grocers, juice production, etc.) as well as on-site consumption. Mr. Emerson suggested craft food production to include micro-breweries, etc. Mr. Melanson questioned whether this approach is an effort to make the code fit a use, rather than the use fitting into the code. Ms. Grinnell requested this be added to the punch list for further discussion. Mr. DiMatteo stated there may need to be some quantification of on-site production levels as it may impact traffic patterns for distribution. Discussion followed regarding existing uses, such as deliveries to the Golden Harvest. Mr. Balano noted these issues would be discussed under plan review, in the Findings of Fact, or conditions of approval. Mr. Alesse noted placing a cap on production could be limiting.

Mr. Melanson moved to schedule a public hearing to discuss Title 16 Amendment – Brew Pub and Micro-Brewery use and definition

Ms. Grinnell seconded

Motion carries: 6 in favor; 0 against; 1 abstention (Driscoll)

Following discussion, a public hearing was scheduled for April 11, 2013.

ITEM 7 – Comprehensive Plan Update Committee - Development Moratorium North of Spruce Creek Action: Discuss and schedule a workshop if warranted. Vern Gardner, Chair of the

Comprehensive Plan Update Committee, would like to discuss this topic with the Planning Board in light of the Committee's Comprehensive Plan update work.

Mr. Gardner was not present.

Ms. Driscoll noted the current comprehensive plan addresses the possibility of changing rural zoning from 1 acre to 1-3 acres or 3-5 acres. The effectiveness of the current cluster ordinance to control growth has been questioned. Ms. Tuveson noted there are two applications currently before the Board under the current cluster ordinance and asked why the application of the cluster ordinance is being questioned without benefit of review. Ms. Driscoll noted the Comp Plan already has the language to increase minimum land area and this needs to be addressed. This was held off because of the cluster ordinance, but believes the Board and other committees need to better understand what this ordinance provides. Ms. Tuveson noted prior testimony regarding restrictive land use regulations. Mr. Balano noted a moratorium would have to go to Council, and the Board would be tasked to provide the parameters and studies to ultimately lift any moratorium. There needs to be measurable goals before a moratorium can be enacted. Mr. Mylroie spoke about the cluster ordinance as addressing the design of projects to better provide for open space. The issue of limiting growth in green areas would limit the number of dwelling units needed as measured within a 10-year period, and direct to areas where municipal services are available. Mr. Emerson noted the mechanics of a moratorium are intense. Mr. Balano noted this request states 'north of Spruce Creek', which may include the entire Town, and this needs to be better defined. Ms. Driscoll noted water and sewer vs. non- water and sewer areas are also part of the discussion. Mr. Melanson expressed regret that the chairman of the Comp Plan Committee was not present. He noted in 2003 the issue of increasing minimum lot sizes from one to three acres was defeated at Council level. Facts are needed to make reasoned decisions. Mr. Alesse stated the Comp Plan still has standing and may need to be changed as circumstances change. Mr. Emerson suggested a workshop needs to be held prior to a public hearing as the issue is complex, requiring significant input.

Discussion followed to schedule a workshop and invite the Comp Plan Update Committee, Council; Conservation Commission, Open Space Committee, Economic Development Committee, and Planning Board. It was suggested the invitation be included in Council Packets. Discussion followed regarding how to notice the workshop and the prior development review moratorium in Kittery, whether land use experts should be invited, and context of the workshop. Mr. Mylroie summarized: does the town want to target growth in identified areas and, if so, what should the density be and the proper mechanism to

implement changes. If the mechanism takes a period of time to draft, a development time-out may be necessary.

Mr. Emerson requested the Comp Plan Committee prepare a brief regarding this issue and submit one week prior to the workshop for distribution.

A workshop was scheduled for May 15, 2013 at 6:00 p.m. in Council Chambers.

Ms. Grinnell moved to adjourn
Ms. Tuveson seconded
Motion carries unanimously

The Kittery Planning Board meeting of March 28, 2013 adjourned at 8:43p.m.

Submitted by Jan Fisk, Recorder – March 2, 2013